IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16193 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHIS @ RAJKUMAR RAMVILAS BHATIA - Petitioner(s)

Versus

STATE OF GUJARAT THR' SECRETARY & 2 - Respondent(s)

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Appearance :

MR ARVIND K THAKUR for Petitioner(s) : 1,MR KS TAMAYACHE for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 11/10/2005

ORAL JUDGMENT

1. This petition under Article 226 of the Constitution of India is directed against the order dated 2/5/2005

passed by Respondent no.2 Commissioner of Police, Ahmedabad City in exercise of power under Sub-section (2) of Section 3 of the Gujarat Prevention Anti-Social Activities Act, 1985 (herein after referred to as 'the Act" for short).

1.1 The challenge is on the ground that the petitioner is not a "immoral traffic offender" as defined under Section 2(j) of the Act. Therefore, the order of detention is violative of Article 14, 19, 21 and 22 of the Constitution of India.

2. The order of detention and the grounds supplied along with on the same date reveals registration of C.R. No. 3008/05 dated 6/4/2005 for the offence punishable under various provisions of Prevention of Immoral Traffic Act. Certain incidents have been relied on, which includes statements of two witness narrating about illegal and antisocial activities of the detenu on 10/3/2005 and 26/3/2005. The detenu as created an atmosphere of terror by using abusive language and showing weapons to the members of public and made attempts resulting into disturbance of public order. The statements referred to illegal activities of the detenu

indulging into illicit traffic of women and, therefore, such activities of the detenu considered by the authority is sufficient enough to define the detenu as immoral traffic offender under Section 2(j) of the Act.

2.1 The detaining authority has considered inadequacy about other remedies available under ordinary law. However, considering the fact that the detenu is in judicial custody, on release by the Court by enlarge a detenu on appeal, he is likely to continue his illegal activities in future also.

3. The learned advocate for the petitioner has submitted that the registration of C.R. as stated in grounds of detenu is a solitary incident and he has also relied on the order dated 9/8/2005 passed in Special Civil Application No. 11448/05 and submitted that the activities, as alleged by the detaining authority, against the detenu, by itself cannot be said that the same is affecting the public order. In the circumstances, the order of detention requires to be quashed and set aside.

4. On the other hand Mrs. Hansa Punani learned AGP has

supported the impugned action of the respondent authority and submitted that no interference is called for by this Court in exercise of power under Article 226 of the Constitution of India.

5. Having considered the rival submissions of the parties and on perusal of the record, the contention raised by the learned advocate about solitary incident not disturbing the public order requires to be upheld. It is pertaining to note that such incidents, obviously cannot be said to have bearing upon normal social life and unless the relevant material exist, accepting habitual tendency of the detenu to indulge into criminal or antisocial activities so often, disturbing even tempo of public life, no power under the Act can be exercised. In the present case the detenu is detained as an immoral traffic offender within the meaning of Section 2(j) of the Act, where the requirement is a person who habitually commits or abates the commission on any offence under the Act is to be detained and not otherwise. In the circumstances, it is held that the order impugned does not fulfill the required of Section 2(j) of the Act and, therefore, the law laid down in the decision dated 9/8/2005 in Special Civil Application No. 11448/05, where

reliance is placed on earlier decision in Special Civil Application No. 3881/05, is squarely applicable and, therefore, the order of detention dated 2/5/2005 impugned in this petition is quashed and set aside. The detenu, Ashis@Rajkumar Ramvilas Bhatia is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct Service is permitted.

(Anant S. Dave, J.)

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